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10/757,317	01/14/2004	Mary Jo Winterer	AP35651 - 070457.1675	3521
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EXAMINER LIU, CHIA-YI				
ART UNIT 3695		PAPER NUMBER		
NOTIFICATION DATE 09/23/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DL.NYDOCKET@BAKERBOTTS.COM

Office Action Summary

Application No.

10/757,317

Applicant(s)

WINTERER ET AL.

Examiner

CHIA YI LIU

Art Unit

3695

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-20 is/are pending in the application.
- 4a) Of the above claim(s) 13-16, 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-12, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-85/06)
Paper No(s)/Mail Date 2/25/2010 and 4/26/2010.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application.
- 6) ☐ Other: _____.

DETAILED ACTION

This action is in response to an amendment submitted 8/5/2010. Applicant has canceled all previous claims and added new claims 9-20. Newly submitted claims 13-16 and 19-20 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 9-12 and 17-18, drawn to automatically deducting funds from a depository account on a period cycle determined by a consumer (and is directed toward invention originally claimed), classified in class 705, subclass 35
- II. Claims 13-16, drawn to determining details on how payments are applied to account balance, classified in class 705, subclass 40
- III. Claims 19, drawn to determining whether an amount of transaction is below a spending limit and validating a transaction by adding the value of transaction to an outstanding balance, classified in class 705, subclass 39.
- IV. Claim 20, determining whether to approve transaction based on information stored in one or more memories, classified in class 705, subclass 48.

The inventions are independent or distinct, each from the other because:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II has separate utility such as determining details on how payments are applied to account balance. See MPEP § 806.05(d).

Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination III has separate utility such as determining whether an amount of transaction is below a spending limit and validating a transaction by adding the value of transaction to an outstanding balance. See MPEP § 806.05(d).

Inventions I and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination IV has separate utility such as determining whether to approve transaction based on information stored in one or more memories. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 13-16 and 19-20 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-12 and 17-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

Regarding Claims 9-12, it is not clear which, if any, structural elements are attributed to the recited "first institution computer system", "first financial institution" and "second financial institution". System claims are defined by structural elements and any corresponding functionality. The "first institution computer system", "first financial institution", and "second financial institution" do not impart structure. Appropriate correction is required.

Regarding Claims 17-18, it is not clear which, if any, structural elements are attributed to the recited "issuing financial institution computer system", "issuing financial institution", and "second financial institution". System claims are defined by structural elements and any corresponding functionality. The "issuing financial institution computer

system", "issuing financial institution" and "second financial institution" do not impart structure. Appropriate correction is required.

Regarding Claims 9 and 17, the phrase "conducting two or more transactions and incurring charges associated with such transaction" renders the claims indefinite. The term "such" means "of the kind, character, degree, extent, etc., of that or those indicated or implied." It is unclear what Applicant attempts to set forth by the term "such." It is unclear whether "such transaction" is referring to the "two or more transactions" or other transactions of similar character. Appropriate correction is required.

Regarding Claims 9 and 17, the phrases "incurring charges associated with each such transaction" and "payment cycle is associated with said credit payment card" and "spending limit associated with said credit payment card" render the claims indefinite. Everything in this world is somewhat associated with every other thing in this world. Specifically it is unclear what applicant is attempting to set forth by the terms "associated with." One cannot determine the scope of the invention. Appropriate correction is required.

Regarding Claim 9, the phrase "stores information relating to a consumer depository account" renders the claims indefinite. Everything in this world is related to every other thing in this world. Specifically it is unclear what applicant is attempting to set forth by the terms "relating to." One cannot determine the scope of the invention. Appropriate correction is required.

Claim 18 recites the limitation "the Automated Clearing House network." There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

All claims dependent from Claims 9 and 17 inherit the same rejections under 35 U.S.C. 112, 2nd paragraph.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bucci (US 6,786,400) in view of DeSane (US 2003/0041018 A1), and further in view of "How to Avoid Credit Card Late Fees."

As per Claim 9

Bucci ('400) discloses

a first financial institution computer system maintained by a first financial institution, wherein said first financial institution computer system stores information relating to a consumer depository account (checking account) holding funds on behalf of a consumer, see Fig 3 (345, 350) and column 2, lines 6-9

a credit payment card for conducting two or more transactions and incurring charges associated with each such transaction, see column 2, lines 2-9 (conduct at least one transaction/conduct at least one other transaction = two or more transactions) and column 7, lines 45-56 (the card can be a credit card)

said credit payment card being issued to said consumer by a second financial institution, see column 7, lines 45-56 (The card can be a credit card. Regardless of the type of card...the card number is operable to access both credit account and an account being funded with money. The accounts may be with the same financial institution or separate financial institution)

Bucci ('400) teaches said card further being linked by a payment network to said depository account (checking account), see column 2, lines 6-14 and column 7, lines 45-56, but fails to explicitly disclose the depository account is used for

covering said charges conducted by the credit payment card. DeSane ('048) teaches depository account (checking account) is used for covering said charges associated with the transaction conducted by a credit payment card, see paragraph 0027 (monthly credit card bills to be paid by direct withdrawal from the debtor's checking account). Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include the depository account is used for covering said charges. One would be motivated to do so for the benefit of allowing user to have money to pay for credit bill when the bill is due.

Bucci ('400) teaches a credit payment card, see column 7, lines 49-51, and a credit line balance, see column 5, line 49-51, but fails to explicitly disclose a payment cycle is associated with said credit payment card and a credit payment card balance reflects a spending limit associated with said credit payment card. Official Notice [now admitted prior art] is taken that it is old and well known to have a payment cycle associated with a credit card and a credit card balance reflecting a spending limit associated with the credit card (For example, Bank of America, Wells Fargo, and most other major banks allows user to associate credit card with a payment cycle and provide customers with credit card balance reflecting his/her spending limit on the card.) Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include a payment cycle is associated with said credit payment card and a credit payment card balance reflects a spending limit associated with said credit payment card. One of ordinary in the skill would be motivated to do so, for the benefit of allowing customers to keep track of the balance and avoiding over-spending.

Bucci ('400) fails to explicitly disclose wherein at least a portion of said charges accumulated using said credit payment card is are deducted automatically from said depository account on a periodic cycle and applied to said credit card balance. DeSane ('048) teaches at least a portion of said charges accumulated using said credit payment card are deducted automatically from a depository account on a periodic cycle, see paragraph 0027 (monthly credit card bills to be paid by direct withdrawal from the debtor's checking account). Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include at least a portion of said charges accumulated using said credit payment card is are deducted automatically from said depository account on a periodic cycle and applied to said credit card balance. One of the ordinary skill in the art would be motivated to do so, for the benefit of saving time and preventing late payment.

Bucci ('400) fails to explicitly disclose credit payment card auto deduction periodic cycle is determined by said consumer. "How to Avoid Credit Card Late Fees" teaches choose an online payment amount that automatically covers the minimum amount due on a credit card each month and choose and automatic bill

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payment date well in advance of credit card due date, see Page 2. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include credit payment card auto deduction periodic cycle is determined by said consumer. One would have been motivated to do so for the benefit of giving consumer more control over when credit card payment is automatically deducted from his or her checking account each month.

Further, Applicant is reminded that "Apparatus claims must be structurally distinguishable from the prior art: while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function" In re Schreiber, see MPEP 2114 (128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed Cir. 1997))

As per Claim 10

Bucci ('400) further discloses a spending limit is associated with said card, see column 11, lines 4-5 and column 6, line 40 (credit limit associated with the credit account) but fails to explicitly disclose the spending limit is reduced based on said charges, and refreshed automatically as a function of said automatic deducting. Official Notice [now admitted prior art] is taken that it was old and well known in the art to reduce credit limit base on charges and refresh credit limit automatically as a function of automatic deducting. Therefore, the Examiner asserts that it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include spending limit is reduced based on said charges, and refreshed automatically as a function of said deducting means. One of ordinary skill in the art would be motivated to do so for the benefit of keeping updated record of how much the cardholder can spend using the credit card.

As per Claim 11

Bucci ('400) does not specifically disclose wherein said consumer is periodically informed of said charges made on said credit payment card and of said amount. Official Notice [now admitted prior art] is taken that it was old and well known in the art to for a credit card company to inform consumer periodically of the charges made on his/her credit card and of the amount received to cover the charges. (For Example, monthly credit card statements) Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include wherein said consumer is periodically informed of said charges made on said credit payment card and of said amount. One of ordinary in the skill would be

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motivated to do so, for the benefit of allowing customers to keep track of the balance and avoiding over-spending.

As per Claim 12

Bucci ('400) does not specifically disclose wherein said consumer receives rewards in exchange for use of said credit payment card. Official Notice is taken that it was old and well known in the art to receive rewards in exchange for use of credit payment card. (For example, most credit card company offers rewards such as cash back, redeeming mileage as an incentive for using credit payment card) Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include wherein said consumer receives rewards in exchange for use of said credit payment card. One would have been motivated to do so for the benefit of giving rewards as incentive for customer to use the credit card more often.

As per Claim 17

Bucci ('400) discloses

an issuing financial institution computer system maintained by an issuing financial institution wherein said issuing financial institution computer system stores information relating to a credit payment card account issued by said issuing financial institution, see at least Fig 3 (330, 340) and column 2, 27-32

a credit payment card, associated with said credit payment card account, for conducting two or more transactions and incurring charges associated with each such transaction, see column 2, lines 2-9 (conduct at least one transaction/conduct at least one other transaction = two or more transactions) and column 7, lines 45-56 (the card can be a credit card)

Bucci ('400) teaches said card further being linked by a payment network to said depository account (checking account) maintained at a second financial institution, see column 2, lines 6-14 and column 7, lines 45-56, but fails to explicitly disclose the depository account is used for covering said charges conducted by the credit payment card. DeSane ('048) teaches depository account (checking account) is used for covering said charges associated with the transaction conducted by a credit payment card, see paragraph 0027 (monthly credit card bills to be paid by direct withdrawal from the debtor's checking account). Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include the depository account is used for covering said

charges. One would be motivated to do so for the benefit of allowing user to have money to pay for credit bill when the bill is due.

Bucci ('400) teaches a credit payment card, see column 7, lines 49-51, and a credit line balance, see column 5, line 49-51, but fails to explicitly disclose a payment cycle is associated with said credit payment card and a credit payment card balance reflects a spending limit associated with said credit payment card. Official Notice [now admitted prior art] is taken that it is old and well known to have a payment cycle associated with a credit card and a credit card balance reflecting a spending limit associated with the credit card (For example, Bank of America, Wells Fargo, and most other major banks allows user to associate credit card with a payment cycle and provide customers with credit card balance reflecting his/her spending limit on the card.) Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include a payment cycle is associated with said credit payment card and a credit payment card balance reflects a spending limit associated with said credit payment card. One of ordinary in the skill would be motivated to do so, for the benefit of allowing customers to keep track of the balance and avoiding over-spending.

Bucci ('400) fails to explicitly disclose wherein at least a portion of said charges accumulated using said credit payment card is are deducted automatically from said depository account on a periodic cycle and applied to said credit card account. DeSane ('048) teaches at least a portion of said charges accumulated using said credit payment card are deducted automatically from a depository account on a periodic cycle, see paragraph 0027 (monthly credit card bills to be paid by direct withdrawal from the debtor's checking account). Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include at least a portion of said charges accumulated using said credit payment card is are deducted automatically from said depository account on a periodic cycle and applied to said credit card balance. One of the ordinary skill in the art would be motivated to do so, for the benefit of saving time and preventing late payment.

Bucci ('400) fails to explicitly disclose credit payment card auto deduction periodic cycle is determined by said consumer. "How to Avoid Credit Card Late Fees" teaches choose an online payment amount that automatically covers the minimum amount due on a credit card each month and choose an automatic bill payment date well in advance of credit card due date, see Page 2. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include credit payment card auto deduction periodic cycle is determined by said consumer. One would have been motivated to do so for the benefit of giving

consumer more control over when credit card payment is automatically deducted from his or her checking account each month.

Further, Applicant is reminded that "Apparatus claims must be structurally distinguishable from the prior art: while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function" In re Schreiber, see MPEP 2114 (128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed Cir. 1997))

Claims 9, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bucci (US 6,786,400) in view of DeSane (US 2003/0041018 A1), and further in view of Allen et al. (US 2003/0200107 A1)

As per Claim 9

Bucci ('400) discloses

a first financial institution computer system maintained by a first financial institution, wherein said first financial institution computer system stores information relating to a consumer depository account (checking account) holding funds on behalf of a consumer, see Fig 3 (345, 350) and column 2, lines 6-9

a credit payment card for conducting two or more transactions and incurring charges associated with each such transaction, see column 2, lines 2-9 (conduct at least one transaction/conduct at least one other transaction = two or more transactions) and column 7, lines 45-56 (the card can be a credit card)

said credit payment card being issued to said consumer by a second financial institution, see column 7, lines 45-56 (The card can be a credit card. Regardless of the type of card...the card number is operable to access both credit account and an account being funded with money. The accounts may be with the same financial institution or separate financial institution)

Bucci ('400) teaches said card further being linked by a payment network to said depository account (checking account), see column 2, lines 6-14 and column 7, lines 45-56, but fails to explicitly disclose the depository account is used for covering said charges conducted by the credit payment card. DeSane ('048) teaches depository account (checking account) is used for covering said charges associated with the transaction conducted by a credit payment card, see paragraph 0027 (monthly credit card bills to be paid by direct withdrawal from the debtor's checking account). Therefore, the Examiner asserts that it would have

been obvious to one of ordinary skill in the art at the time the invention was made to modify Buccì's invention to include the depository account is used for covering said charges. One would be motivated to do so for the benefit of allowing user to have money to pay for credit bill when the bill is due.

Bucci ('400) teaches a credit payment card, see column 7, lines 49-51, and a credit line balance, see column 5, line 49-51, but fails to explicitly disclose a payment cycle is associated with said credit payment card and a credit payment card balance reflects a spending limit associated with said credit payment card. Official Notice [now admitted prior art] is taken that it is old and well known to have a payment cycle associated with a credit card and a credit card balance reflecting a spending limit associated with the credit card (For example, Bank of America, Wells Fargo, and most other major banks allows user to associate credit card with a payment cycle and provide customers with credit card balance reflecting his/her spending limit on the card.) Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Buccì's invention to include a payment cycle is associated with said credit payment card and a credit payment card balance reflects a spending limit associated with said credit payment card. One of ordinary in the skill would be motivated to do so, for the benefit of allowing customers to keep track of the balance and avoiding over-spending.

Bucci ('400) fails to explicitly disclose wherein at least a portion of said charges accumulated using said credit payment card is are deducted automatically from said depository account on a periodic cycle and applied to said credit card balance. DeSane ('048) teaches at least a portion of said charges accumulated using said credit payment card are deducted automatically from a depository account on a periodic cycle, see paragraph 0027 (monthly credit card bills to be paid by direct withdrawal from the debtor's checking account). Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Buccì's invention to include at least a portion of said charges accumulated using said credit payment card is are deducted automatically from said depository account on a periodic cycle and applied to said credit card balance. One of the ordinary skill in the art would be motivated to do so, for the benefit of saving time and preventing late payment.

Bucci ('400) fails to explicitly disclose credit payment card auto deduction periodic cycle is determined by said consumer. Allen ('107) teaches customer (user) completes dollar amount for ACH transaction and the frequency within which the ACH transaction is scheduled such as monthly recurring debit and the date of periodic payments end and checking account information, see paragraph 0139. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Buccì's invention to include credit payment card auto deduction periodic cycle is determined by said consumer. One would have been motivated to do so for the

benefit of giving consumer more control over when credit card payment is automatically deducted from his or her checking account each month.

Further, Applicant is reminded that "Apparatus claims must be structurally distinguishable from the prior art: while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function> In re Schreiber, see MPEP 2114 (128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed Cir. 1997))

As per Claim 17

Bucci ('400) discloses

an issuing financial institution computer system maintained by an issuing financial institution wherein said issuing financial institution computer system stores information relating to a credit payment card account issued by said issuing financial institution, see at least Fig 3 (330, 340) and column 2, 27-32

a credit payment card, associated with said credit payment card account, for conducting two or more transactions and incurring charges associated with each such transaction, see column 2, lines 2-9 (conduct at least one transaction/conduct at least one other transaction = two or more transactions) and column 7, lines 45-56 (the card can be a credit card)

Bucci ('400) teaches said card further being linked by a payment network to said depository account (checking account) maintained at a second financial institution, see column 2, lines 6-14 and column 7, lines 45-56, but fails to explicitly disclose the depository account is used for covering said charges conducted by the credit payment card. DeSane ('048) teaches depository account (checking account) is used for covering said charges associated with the transaction conducted by a credit payment card, see paragraph 0027 (monthly credit card bills to be paid by direct withdrawal from the debtor's checking account). Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include the depository account is used for covering said charges. One would be motivated to do so for the benefit of allowing user to have money to pay for credit bill when the bill is due.

Bucci ('400) teaches a credit payment card, see column 7, lines 49-51, and a credit line balance, see column 5, line 49-51, but fails to explicitly disclose a payment cycle is associated with said credit payment card and a credit payment card balance reflects a spending limit associated with said credit payment card. Official Notice [now admitted prior art] is taken that it is old and well known to

have a payment cycle associated with a credit card and a credit card balance reflecting a spending limit associated with the credit card (For example, Bank of America, Wells Fargo, and most other major banks allows user to associate credit card with a payment cycle and provide customers with credit card balance reflecting his/her spending limit on the card.) Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include a payment cycle is associated with said credit payment card and a credit payment card balance reflects a spending limit associated with said credit payment card. One of ordinary in the skill would be motivated to do so, for the benefit of allowing customers to keep track of the balance and avoiding over-spending.

Bucci ('400) fails to explicitly disclose wherein at least a portion of said charges accumulated using said credit payment card is are deducted automatically from said depository account on a periodic cycle and applied to said credit card account. DeSane ('048) teaches at least a portion of said charges accumulated using said credit payment card are deducted automatically from a depository account on a periodic cycle, see paragraph 0027 (monthly credit card bills to be paid by direct withdrawal from the debtor's checking account). Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include at least a portion of said charges accumulated using said credit payment card is are deducted automatically from said depository account on a periodic cycle and applied to said credit card balance. One of the ordinary skill in the art would be motivated to do so, for the benefit of saving time and preventing late payment.

Bucci ('400) fails to explicitly disclose credit payment card auto deduction periodic cycle is determined by said consumer. Allen ('107) teaches customer (user) completes dollar amount for ACH transaction and the frequency within which the ACH transaction is scheduled such as monthly recurring debit and the date of periodic payments end and checking account information, see paragraph 0139. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include credit payment card auto deduction periodic cycle is determined by said consumer. One would have been motivated to do so for the benefit of giving consumer more control over when credit card payment is automatically deducted from his or her checking account each month.

Further, Applicant is reminded that "Apparatus claims must be structurally distinguishable from the prior art: while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function> In re Schreiber, see MPEP 2114 (128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed Cir. 1997))

As per Claim 18

Bucci ('400) teaches credit payment card being linked by a payment network to a depository account (checking account), see column 2, lines 6-14 and column 7, lines 45-56, but fails to explicitly disclose wherein said payment network is the Automated Clearing House network. Allen ('107) teaches automatic clearing-house processor is provided to handle payments made by credit cards, see paragraph 0013, and a customer (user) completes dollar amount for ACH transaction and the frequency within which the ACH transaction is scheduled such as monthly recurring debit and the date of periodic payments end and checking account information, see paragraph 0139. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bucci's invention to include wherein said payment network is the Automated Clearing House network. One would have been motivated to do so for the benefit of allowing customer to withdraw the exact payment amount from a bank account of his or her choice.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHIA YI LIU whose telephone number is (571)270-1573. The examiner can normally be reached on Mon-Thurs, alternating Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHARLES KYLE can be reached on (571) 272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thu Thao Havan/
Primary Examiner, Art Unit 3695